IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 535 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

CHATRABHUJ KESHAVJIBHAI

Appearance:

MR ST MEHTA APP for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1, 2, 3, 4, 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2000

ORAL JUDGEMENT

This Revision Application has been preferred by the State Government under section 397 read with section 401 CRPC against the order dated 13th September, 1985, made by the learned Judicial Magistrate First Class, Manavadar, below complaint Ex. 1 in Criminal Case No.

719/85.

Upon inspection made by the Drugs Inspector on 25th November, 1982, the accused firm was found to be in possession of mis-branded drugs. The Firm and the partners therein were thus alleged to have acted in contravention of the Drugs and Cosmetic Act, 1940 (hereinafter referred to as 'the Act'), which is an offence punishable under section 27 of the Act. A complaint in that regard was lodged by the Drugs Inspector before the learned Judicial Magistrate First Class, Manavadar, on 16th November, 1984. Under his order dated 22nd November, 1984, the learned Magistrate observed that against three of the accused persons, a police complaint was lodged and a chargesheet was also received by the Magistrate. He was, therefore, of the opinion that since the police had already lodged a complaint, cognizance of offence againt those three accused persons was not required to be taken pursuant to the complaint lodged by the Drugs Inspector. He, therefore, directed that the complaint against three accused persons against whom a police complaint was received and the chargesheet was also filed, be dismissed and the cognizance of the offence be taken against the remaining two accused. Feeling aggrieved, the State has preferred the present Revision Application.

The learned Magistrate appears to be of the opinion that the Drugs Inspector who has been empowered to lodge complaint with respect to the offence under the Act can lodge complaint either before the court or before the police as well. A Magistrate can take cognizance of the offence upon report made by the Police pursuant to the complaint lodged before the police. Such an action is in compliance with section 32 of the Act and no fresh complaint was required to be made by the Drugs Inspector before the court. He, therefore, dismissed the complaint as against three accused persons against whom the police had already submitted the chargesheet and as the Criminal Case No. 369/84 was registered against those three persons.

Reliance has been placed upon the judgment of the Bombay High Court in the matter of CHUNILAL VALLABHJI GANDHI VS STATE (AIR 1959, BOMBAY, 554).

I am afraid, the line of reasoning adopted by the learned Magistrate is not correct. Section 32 (1) of the Act, as it stood prior to amendment on 15th September, 1987, provides, interalia, that no prosecution under the said Chapter shall be instituted except by an Inspector.

This necessarily means that it was the Inspector appointed under section 20 (1) of the Act alone who could have lodged complaint before the Magistrate in respect of the offence under the Act. Even in a case where the Inspector has taken assistance of the police for investigation of the offence, it is the Inspector alone who is empowered to lodge complaint and the learned Magistrate could have taken cognizance of the offence upon presentation of the complaint by the Inspector alone. In the matter of Chunilal Vallabhji Gandhi (supra), the complaint lodged by the Inspector was accompanied by the chargesheet submitted by the police. It was contended that the cognizance of the offence was taken on police report and not on the complaint presented by the Inspector. The court held that the chargesheet submitted by the police shall be treated as superfluous, and it was necessarily a complaint lodged by the Inspector. The said judgment does not hold that the complaint lodged before the police is sufficient compliance of section 32 of the Act, and cognizance of the offence can be taken on the report submitted by the police also. In my view, therefore, the learned Magistrate has erred in dismissing the complaint lodged by the Inspector on 26th September, 1984, as against three of the accused persons, against whom the police had submitted a report and the Criminal Case No. 369/84 has been registered.

In view of the above discussion, the Revision Application is allowed. The impugned order dated 13th September, 1985, made by the learned Judicial Magistrate, First Class, Manavadar,in Criminal Case No. 719/85, is quashed and set aside. Interim relief is vacated. The learned Magistrate will take cognizance of the offence pursuant to the complaint made by the Inspector on 16th November, 1984 against all the five accused. If need be, the Criminal Case No. 369/84 may be consolidated along with the Criminal Case No. 719/85. The learned Magistrate shall now proceed further with the trial against the accused in accordance with law with due diligence. Rule is made absolute accordingly.

(MS R.M.DOSHIT J)

JOSHI